St. John's Law Review

Volume 26
Number 1 *Volume 26, December 1951, Number 1*

Article 24

May 2013

# Brief Writing and Oral Argument (Book Review)

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titioner because of an inadequate index and the sequence is not in conformity with the ideological associations of the busy attorney. Here, the material is admirably arranged and the tables and index serve to rapidly and accurately direct the reader.

Although *New York Practice* is of inestimable value to the active practitioner, it is equally attractive to the scholar and student by reason of its unusually apt and crystal clear exposition of the history and philosophy of the law of procedure and extensive citations and discussions of cases, legislative history and treatises. A well-known legal author once said: "The business of a lawyer is to know the law." The logical corollary to that statement is that it is the business of a law student to learn the law. This the student of pleading and practice may do by using Professor Prashker's book. In short, Professor Prashker's *New York Practice* is the magic capsule of knowledge phantasied from time immemorial by the practitioner and scholar of the law.

JAMES B. M. MCNALLY.*

BRIEF WRITING AND ORAL ARGUMENT. By Edward D. Re. New York: Oceana Publications, 1951. Pp. x, 150. $3.50.

Most books produced by members of the law teaching fraternity are not written primarily for the law student. On the contrary they are usually written for the use of lawyers, judges and law teachers, and from the viewpoint of satisfying their concepts of legal scholarship in the subject treated. There is also the further objective of escaping the barbs of the reviewer. Moreover, all too frequently, the writer of a book initially sets out to produce what he hopes may be called an "original contribution" to the subject dealt with. This is altogether a most worthy objective, yet it must be kept in mind that it is not given to many of us to make original contributions. Having, in an editorial capacity and over a long period of time, observed the literary efforts of many in our profession, it has long been my impression that much of the time which some authors have expended in the direction of an original contribution would have been better expended if it had been used in bringing together widely scattered information on some specific topic, arranging and synthesizing such material in a systematic order and in making it generally available in printed form to the legal profession.

With this idea in mind, it is refreshing to discover Professor Edward D. Re's little book on *Brief Writing and Oral Argument.* It is written primarily for the law student in simple, clear-cut, understandable language, yet with sufficient technical treatment to serve the needs of lawyers who have only recently graduated from law schools, the needs of those law schools which conduct courses on how to write trial briefs and memoranda of law, and how to prepare a clear-cut brief for appellate review. This book may also be of

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service to the law clerk, to government employees and other administrative employees who are asked to write reports and opinions on matters related to the law. It will certainly serve as an effective aid in various types of moot court work, and finally, even the experienced lawyer will find within its covers suggestions of value.

Coming to the book itself, its objective was "to bring together . . . some of the fundamental principles underlying an effective brief and a convincing oral argument," and to supply "orientation for the reader confronted with the problem of writing a brief and the argument of a case on appeal." This is a highly desirable objective and one worthy of the efforts of any student of the law. By concentrating on this problem of the student, by gathering together, synthesizing and arranging in an orderly fashion, and in language understandable to the law student and to the members of the legal profession, Professor Re has so effectively worked as to make the product the equivalent of an original contribution.

The author accomplishes much more than his assigned objectives of bringing together the fundamental principles underlying a brief and orienting the brief writer. In the short space of 138 pages, he presents his subject in four parts.

In Part I, the author deals with certain preliminary matters by way of introduction, such as moot court participation, the nature and importance of appellate review, moot court rules and mechanics for prosecuting appeals in moot courts, with a discussion on legal method and legal writing. In furnishing a handy and efficient tool in aid of moot court work, Professor Re has performed a most useful service.

Many of the suggestions on legal writing may prove of extreme value to students who have difficulty in writing examinations. Also included in Part I is a consideration of the elements which must be considered in preparing to write a brief, such as a thorough understanding of the case based upon a digest of the facts and of the record. This section is also filled with detailed suggestions on legal research, including such things as the use of card indexes, digest of materials read, finding the law, bringing authority up to date, and the doctrine of stare decisis.

Part II is devoted to appellate brief writing. *First,* matters of general application, such as the purpose, definition, contents and tenor of the appellate brief, are considered. *Secondly,* the appellate brief is broken down in its component parts, and then in a systematic and orderly manner each part of the brief is first explained on a theoretical basis and then its operation is made clear by excellent illustrative examples, with references to authorities to back up the conclusions reached. *Thirdly,* the preliminary statement is dealt with. *Fourthly,* and *Fifthly,* Professor Re deals with "The Question Presented" and "The Statement of Facts," suggesting, contrary to the usual practice, that the issues presented should be placed before the statement of facts. The reason for this preference in order is stated as follows:

> If the questions to be determined on the appeal are stated before the facts, the judge is placed in the position whereby he may read the facts *in the light of the questions that must be determined.* This places the judge in a better position to evaluate the salient facts. 'The Questions Presented'

> have forewarned the judge as to the legal problems that he must solve, and, hence, he is better able to appreciate the significance and relative importance of the facts that will follow. . . .

A thorough consideration of Professor Re's arguments in favor of this order of presentation of these parts of an appellate brief seems likely to convince the skeptical reader of the soundness of the author's view, although some will doubtless dissent.

In connection with the discussion of the statement of facts, which is properly spoken of as being of "overwhelming" importance in the preparation of a brief, the author goes into what he describes as the ABC of writing, that is, the requirement of accuracy, brevity and clarity, in all parts of the work. This suggests the need for a short, succinct, honest and straightforward presentation of the salient facts of the case, omitting argument, opinion or embellishment, and including the unfavorable as well as the favorable elements. This the author emphasizes, observing that a failure to include the unfavorable fact may, when pointed out by opposing counsel, or discovered by the court, affect the "integrity of the brief"! "Verbosity," says the author, should be avoided so as not to impose upon the time of the court. And clarity is defined as presenting the facts so that they will be understood by the reader with a minimum of effort. This section appeals strongly to this reviewer, as this same problem is always present in teaching the beginning student how to analyze causes of action and to frame issues of law and issues of fact. The ABC of writing deserves high commendation. *Sixth,* is the argument, which treats of its scope, the preliminary draft and outline of point headings. *Seventh,* the author properly emphasizes the necessity of a final checking of citations and quotations, together with a final reading of the brief before submission to the court as, says the author, "It must be a perfect document reflecting many hours of research, study and careful draftsmanship." Finally, *Eighth,* the author treats of the respondent and reply briefs with the same careful attention and detail evidenced throughout the presentation of the earlier sections on appellate brief writing.

Part III deals with the oral argument based on the brief. In this section of the book such topics as the importance, the preparation, and the presentation of the oral argument are presented. The author stresses the need for an understanding of the rules of the court, a knowledge of the record, use of written notes, attitude toward the court, the method of handling questions presented by the court, and last, but not least, the necessity of observing the proper rules of courtesy and giving the court due deference, all of which are important in determining success or failure in the presentation of an oral argument.

Part IV covers trial briefs and memoranda of law, topics which this reviewer thinks might well have been placed before Part II, dealing with appellate brief writing. This, however, is merely a matter of opinion, and in no way detracts from the excellent quality of Professor Re's effort. In this section of the book we find the trial brief defined, and its nature and function clearly explained and graphically illustrated. Also explained is the necessity of making a careful investigation of the facts of the case, and a determination of what is to be the theory of the case, defects which cannot well be remedied at a later stage of the proceeding. The form and content of the trial brief

also comes in for treatment, the author pointing out the close relationship between substance and form. This part of the book should prove particularly helpful to the young practicing attorney who finds himself confronted with the problem of brief-writing for the first time.

In considerable detail and effectively, Professor Re also points out in this section the essentials of a good memorandum of law—its content and purpose, its form, and the distinction between a memorandum of law for the office and one for the court.

It is the reviewer's opinion that even experienced practitioners may profit from Professor Re's helpful hints on oral argument. Observance of these hints will give the lawyer the quiet confidence and ease which is apt to impress the court or the jury. These suggestions may also prove helpful to a lawyer suddenly interrupted with a question from the bench. In this compact little book may be found the story of how distinguished lawyers and judges have handled the problem, which is a "supreme test of the advocate's skill."

The book also includes the form of an appellate brief and a short but adequate bibliography for use by those who wish to pursue the subject further. The technical aspects of the subject as well as the format are good. Its only omission is a table of cases which may well be excusable where the author is observing the rule of brevity.

Among the good books which have been written on brief-writing and oral argument may be included, among others, Cooley's Brief Making and the Use of Law Books (1926); Hick's Materials and Methods of Legal Research (1942) and Weiner's Effective Appellate Advocacy. From the standpoint of price, scope and content, order of presentation, scholarship and literary style, and the high moral tone which pervades every part of the work, this book will compare favorably with its competitors, and because of its succinctness and compactness, will doubtless be used extensively throughout the country in those law schools where the art of brief writing and oral argument is receiving the attention it rightly deserves.

ALISON REPPY.*

INTRODUCTION TO THE STUDY OF LAW. By Bernard C. Gavit. Brooklyn: The Foundation Press, Inc., 1951. Pp. xvi, 388. $4.25.

Dean Bernard C. Gavit of Indiana University School of Law has for some years been concerned with providing an introduction to law which would be helpful to beginning law students. It has been his conviction that students deserve a better background and orientation to the studies that they have undertaken, than has been offered by the traditional law school curriculum.

In the preface to *Introduction to the Study of Law* he says: "This is not a law book; it is a book about law. It is hoped it will be found helpful

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